

FEDERAL GUIDANCE

EPA NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM GUIDANCE

In recent years EPA has developed and distributed to states several guidance documents to be used for updating NPS management programs. The guidance supports a watershed approach to addressing NPS pollution. The watershed approach provides a framework for coordinating public and private sector efforts to address the highest priority water-related problems within geographic areas, considering both surface and ground water flow. The watershed approach is commonly characterized by four key principles:

- C well integrated partnerships;
- C a specific geographic focus;
- C action driven by environmental objectives and by strong science and data; and
- C coordinated priority setting and integrated solutions.

Nine Key Elements

Federal guidance issued in 1996 set forth nine key elements that state nonpoint source pollution management programs should address. Subsequent guidance issued in response to the Clean Water Action Plan in 1998 (*Approval Process for Management*

Program Upgrades) requires that states update nonpoint source pollution programs in accordance with these nine key elements in order to be eligible for enhanced funding benefits. The following is a description of how Virginia's program addresses these key program elements.

1. *The state program contains explicit short- and long-term goals, objectives and strategies to protect surface and ground water.*

Virginia has established a clear vision of how to implement programs to effectively control nonpoint source pollution. This vision will be accomplished through implementation of specific short-term and long-term goals as articulated in subsequent sections of this document. These goals are intended to achieve and maintain the beneficial uses of water. In support of these goals, Virginia has identified a series of specific strategies and tasks to guide and direct program implementation and measure program success.

2. *The state strengthens its working partnerships and linkages with appropriate state, tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and federal agencies.*

Virginia's networked approach to program development

and implementation requires strong working partnership among local, state, and federal agencies, soil and water conservation districts, and private sector and citizens groups. The strength of these partnerships is reflected in the levels of participation in the Nonpoint Source Advisory Committee and in the working groups formed to update the state management program.

As described in the preceding chapter, the Nonpoint Source Advisory Committee (NPSAC) is an interagency forum designed to facilitate effective implementation of nonpoint source pollution programs. NPSAC meets bimonthly to promote collaborative decision making and program coordination. NPSAC's role is central to many of the recommendations presented in this document. As such, it is anticipated that this role will broaden and further strengthen Virginia's working partnerships.

Partnerships with soil and water conservation districts support and implement nonpoint source pollution reduction efforts by working with property owners to develop easements, implement conservation plans, and install best management practices (BMPs). Meetings and workshops are conducted throughout the state by partnering with districts and local governments to enhance the awareness of public officials, property owners, and the general public of how important the installation of BMPs is to improving water quality. Furthermore, various environmental programs such as Save Our Streams (SOS) allow for the development of partnerships with citizen groups such as the Izaak Walton League of America, Friends of the Rappahannock, the James River Association, and others. Partnering with citizen groups has resulted in the collection of important water quality data to be used by the state to determine the health of its waters.

There has been extensive public involvement in the update of Virginia's Nonpoint Source Pollution Management Program through participation in work groups formed to develop recommendations contained in this document. Additional opportunities to develop and strengthen partnerships are provided through specific program elements. For example, there is strong public involvement in developing and implementing watershed management plans.

3. *The state uses a balanced approach that emphasizes both state-wide nonpoint source*

pollution control programs and on-the-ground management of individual watersheds where waters are impaired and threatened.

Virginia's evolving watershed management programs complement and strengthen the existing well developed state NPS pollution control programs. This balanced approach enables the commonwealth to address both specific watershed and statewide priorities. Virginia's watershed management programs address both sub-basin and basin-wide priorities and provide a framework for integrating federal, state, and local water quality and natural resource programs.

While Section 319 -funded activities continue to play an important role in addressing nonpoint source pollution in Virginia, this program is just one of several within the state. Through enactment of the Water Quality Improvement Act the state has committed an unprecedented level of funding to expand and strengthen water quality programs.

4. *The state program (a) abates known water quality impairments from nonpoint source pollution and (b) prevents significant threats to water quality from present and future activities.*

Through total maximum daily load development (TMDL) and implementation, Virginia has the institutional mechanism in place to address known water quality impairments. Through ongoing program implementation and basin-wide planning and management efforts, Virginia is working to prevent future impairments. The TMDL process allows Virginia to comprehensively characterize water quality impairments and threats throughout the state.

Virginia has well developed and effective laws and regulations to address all major source categories of

NPS pollution. While some of the actions presented in this document will enhance the effectiveness of these laws and regulations, Virginia has made significant strides in addressing NPS pollution. In fact, the review of Virginia's coastal NPS pollution control program by federal agencies has confirmed Virginia's leadership in addressing difficult NPS issues related to agriculture and forestry.

5. *The state program identifies waters and their watersheds impaired by nonpoint source pollution and identifies important unimpaired waters that are threatened or otherwise at risk. Further, the state establishes a process to progressively address these identified waters by conducting more detailed watershed assessments and developing watershed implementation plans, and then by implementing the plans.*

Virginia's Water Quality Information, Restoration and Monitoring Act states that "the 303(d) and 305(b) reports will provide an accurate and comprehensive assessment of the quality of state surface waters and will provide a basis for developing initiatives and programs to address current and potential water quality impairment. Monitoring shall be conducted so that it establishes consistent siting and monitoring techniques, expands the percentage of river and stream miles monitored, monitors for all substances listed on EPA's 307(a) list, provides for increased sediment, macro invertebrate, benthic organism and fish tissue monitoring, increases frequency of sampling and utilizes announced and unannounced inspections."

This act also requires the development and implementation of a plan to achieve full supporting status for impaired waters. This plan shall include date of expected achievement of water quality objectives, measurable goals, necessary corrective actions, associated costs, benefits and environmental impact of addressing impairments.

Land use information is used to help establish watershed priorities and assess NPS pollution potential through the NPS assessment program. In addition, land use information is incorporated into modeling efforts for the Tributary Strategy process and the Chesapeake Bay

Program. As previously stated, NPSAC provides a forum for information exchange and communication of program planning and implementation activities among water resource management agencies.

Avenues for public participation are provided through several program development activities. An excellent example of this is the Tributary Strategy process. This process involved extensive participation from local, state and federal agencies, private organizations, environmental groups, and private citizens through dozens of meetings within each river basin. This process has helped establish a consensus targeting watershed-based restoration activities. Through various reporting, monitoring and tracking requirements periodic reviews will allow for refinement of program priorities.

6. *The state reviews, upgrades and implements all program components required by section 319(b) of the Clean Water Act, and establishes flexible, targeted and iterative approaches to achieve and maintain beneficial uses of water as expeditiously as practicable.*

(a) A mix of water quality-based and/or technology-based programs designed to achieve and maintain beneficial uses of water; and

(b) A mix of regulatory, non-regulatory, financial and technical assistance as needed to achieve and maintain beneficial uses of water as expeditiously as practicable.

Virginia has a broad range of water quality-based and technology-based programs that collectively help to attain and maintain beneficial uses of state waters. As described in the source category chapters of this document, Virginia has a number of regulatory, non-regulatory, financial and technical assistance tools that support efforts to achieve and/or maintain the beneficial uses of Virginia waters.

Through development of Virginia's Coastal Nonpoint Source Pollution Control Program a compendium of state laws, regulations, technical and financial assistance programs was submitted to EPA and the National Oceanic and Atmospheric Administration

(NOAA). Program development is required only of states with approved Coastal Resource Management Programs. In addition, new and revised laws and regulations are presented in this update document.

NPS program implementation is identified through the description of goals, objectives, strategies and tasks described within each chapter of this document. The ability to measure implementation will be directly correlated to accomplishment of the individual strategies and tasks. This information is presented in tabular format that includes funding sources, lead and cooperating agencies and target dates for completion.

7. *The state identifies federal lands and activities which are not managed consistently with state nonpoint source pollution program objectives. Where appropriate, the state seeks EPA assistance to help resolve issues.*

The Department of Environmental Quality (DEQ) administers the Virginia Coastal Resources Management Program and is the lead agency in Virginia for reviewing and responding to federal consistency determinations and certifications in Virginia. Although federal consistency review is limited to the Virginia Coastal Zone, major federal actions throughout the state are subject to environmental impact review and permit review.

As part of the federal consistency review process, DEQ consults with appropriate state agencies and institutions, as needed. If DEQ finds that a proposed activity is inconsistent with the management program, DEQ works with the federal agency and other interested parties, in accordance with federal consistency provisions, to bring the activity into compliance with state law and regulations.

Federal Activities

Federal agencies are responsible for determining whether federal activities directly affect the state's coastal area and whether those activities are consistent, to the maximum extent practicable, with the state's approved program. All other types of federal activities within the state are subject to federal agency review to determine whether they directly affect the coastal area.

Consistency review determinations made by federal agencies for activities directly affecting the coastal zone are submitted to DEQ.

Federal agencies are required to notify the state of proposed activities that will directly affect the coastal zone, and must provide DEQ with a consistency determination as soon as possible, preferably when the analysis of alternatives is still in the planning stage. The consistency determination must be provided to DEQ no later than 90 days before final approval of the activity. If a federal agency decides that a consistency determination is not required because the federal activity does not directly affect the coastal area, the federal agency shall notify DEQ, briefly setting forth the reasons for its negative determination.

When a proposed federal activity will involve the National Environmental Policy Act (NEPA) process, the agency must provide DEQ with all applicable NEPA documents, as part of its obligation to provide adequate information for DEQ's review of the agency's consistency determination. In such cases, DEQ's review process will not begin until an environmental assessment of a draft Environmental Impact Statement has been provided to DEQ. During the development of NEPA documentation, DEQ encourages federal agencies to consult with the state at the earliest possible time.

Permitted Activities

Federal regulations (15 CFR 930.50 et seq.) require that applicants for federal licenses or permits for activities affecting any land or water use in the coastal area, or for certain renewals or amendments to such licenses or permits, shall provide the federal permitting agency with a certification that the proposed activity is consistent with the state coastal program. At the same time, federal regulations (15 CFR 930.57) require that the applicant transmit a copy of the application, with the necessary data and information for the consistency certification, to DEQ. When a proposed federal license or permit will involve the NEPA process, the applicant must provide DEQ with all applicable NEPA documents as part of the federal agency's obligation to provide adequate information for DEQ's review of the consistency certification.

Federal agencies may not issue a license or permit

unless the state concurs with the applicant's certification. DEQ evaluates the consistency certification based on state enforceable coastal policies which include NPS programs.

Where a state agency has assumed the responsibility for administration of a federal license or permit program, the issuance of such a license or permit by that state agency shall constitute state concurrence with the consistency certification. In the case of VMRC and the joint permitting process for local, state and federal wetlands permits, the issuance of a state wetlands permit for any activity also requiring a Corps of Engineers' 404 permit shall constitute state concurrence with the consistency certification.

Joint Permit Review

Three types of environmental permits are issued by VMRC; (1) subaqueous or bottom lands, (2) tidal wetlands, and (3) coastal primary sand dunes permits. VMRC's authority and responsibilities are derived from Subtitle III of Title 28.2 of the *Code of Virginia* and specifically regulate physical encroachment into these valuable resource areas.

The permit process relies on a single Virginia joint local/state/federal permit application. The review process for which this application was originally designed, considers various local, state and federal statutes governing the disturbance or alteration of environmental resources. VMRC plays a central role as an information clearinghouse for all three levels of review. Applications receive independent, yet concurrent, review by local wetland boards, VMRC, DEQ and the U.S. Army Corps of Engineers.

Environmental Impact Review

DEQ coordinates the state's responses to environmental documents for proposed state and federal projects. Environmental impact review (EIR) staff distribute documents to appropriate state agencies, planning districts and localities for their review and comment. Upon consideration of all comments, staff prepares a single state response.

NEPA requires environmental impact statements or environmental assessments for certain classes of federal projects and actions. DEQ participates in three phases of the NEPA review process: scoping, draft document review, and final document review. DEQ coordinates federal intergovernmental review for all federal actions and locally sponsored projects that are federally funded. Also, all federal actions and programs that directly affect Virginia's coastal zone must be carried out in a manner that is consistent with Virginia's Coastal Resources Management Program. As described above, DEQ reviews federal projects for approved consistency during the NEPA process.

The EIR process is summarized in the following list:

2. Federal agency initiates scoping for information on natural resources and potential adverse environmental impacts of the proposal;
3. DEQ sends copies of scoping requests to appropriate state agencies and relevant divisions of DEQ;
4. DEQ sends scoping comments to federal agency;
5. Appropriate divisions of DEQ, and other state agencies, send comments directly to federal agency with copy to DEQ;
6. Federal agency develops environmental assessment (EA) or environmental impact statement (EIS) in accordance with Council on Environmental Quality (CEQ) Guidelines, issues public notice on availability of document, and establishes deadline for comments on EIS;
7. DEQ sends coordinated review requests form to appropriate DEQ reviewers, state agencies and the affected Planning District Commission (PDC) & locality;
8. DEQ establishes deadline for state review;
9. Federal agency distributes document to DEQ, state reviewing agencies, and the affected PDC & locality;
10. DEQ receives comments from reviewers, resolves conflicts, prepares Commonwealth's response, and alerts Secretary of Natural Resources (SONR) about controversial projects.
11. Federal agency responds to comments on draft document in supplemental EA or EIS or in final EA or EIS;
12. DEQ coordinates review of supplemental

EA/EIS, resolves conflicts, and prepares commonwealth's consolidated comments;

13. Federal agency response to comments on supplemental EA/EIS in final EA/EIS.
 14. Funding of No Significant Impact (FONSI) issued and a Record of Decision generated;
 15. Federal agency proceeds with project.
8. *The state manages and implements its nonpoint source pollution program efficiently and effectively, including necessary financial management.*

Through implementation of recommendations identified by work group participants, Virginia will realize substantial benefits for project design and implementation and improved program integration. Through an expanded BMP tracking system Virginia has increased its ability to measure environmental results and achieve improved fiscal accountability.

9. *The state periodically reviews and evaluates its nonpoint source pollution management program using environmental and functional measures of success, and revises its NPS pollution assessment and its management program at least every five years.*

Currently, Virginia has several reporting requirements that allow for assessment of state surface and groundwater characteristics and provide information pertaining to the level of potential threat or actual impairments. These monitoring efforts conducted by the state and federal agencies also allow for identification of where improvements occur. This type of evaluative information assists in determining levels of effective program implementation. Furthermore, the information provides a sound basis for refining program goals and objectives.



